

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SOUTHWEST AIRLINES CO.,

Plaintiff,

vs.

ROUNDPIPE, LLC, CHASE ROBERTS, and
PAVEL YUREVICH,

Defendants.

Civil Action No. 3:18-cv-00033-G

MOTION TO DISMISS

Honorable Judge A. Joe Fish

Defendants, Roundpipe, LLC, Chase Roberts, and Pavel Yurevich hereby move to dismiss the Complaint against them filed by Plaintiff Southwest Airlines Co. (“Southwest”).

I. Preface

This case arises out of Roundpipe’s operation of an internet website at SWMonkey.com. From early November 2017 to November 21, 2017, SWMonkey.com included functionality and content that allowed users to check prices on Southwest flights (“the Original SWMonkey.com”). That functionality was disabled on November 21, 2017 at about noon (mountain standard time) and much of the content was changed. From that point forward, SWMonkey.com has been a static website including, *inter alia*, a “Thank You” to former customers and answers to some “Frequently Asked Questions” (“the Disabled SWMonkey.com”). Because of the lack of functionality of the Disabled SWMonkey.com, it is necessary to treat the two versions of SWMonkey.com separately for purposes of this motion.

II. Motion to Dismiss Count 1 (Breach of Contract) and Count 6 (Texas Penal Code §33.02) under the Citizens Participation Act (Texas Civil Practice and Remedies Code, Section 27.001 *et seq.*)

Defendants hereby move the Court to dismiss Count 1 and Count 6 of the Complaint against them pursuant to Section 27.001 *et seq.* of the Texas Civil Practice and Remedies Code. Southwest brought the present action solely in response to Roundpipe's exercise of the right of free speech. And, as set forth in the accompanying Memorandum in Support, Southwest cannot establish by clear and specific evidence a *prima facie* case for each essential element of Counts 1 and 6 and/or each essential element of a valid defense to Southwest's claims is established by Roundpipe.

III. Motion to Dismiss Southwest's Complaint under Rule 12(b)(6)

Roundpipe hereby moves the Court to dismiss all Counts of the Complaint pursuant to Rule 12(b)(6) as failing to state a claim. Southwest represented that it would not sue Roundpipe if Roundpipe disabled the Original SWMonkey.com by November 21, 2017. Roundpipe, in reliance on Southwest's representations, disabled the Original SWMonkey.com at about noon (mountain standard time) on November 21, 2017, thereby complying with Southwest's deadline. As such, Southwest is now precluded from asserting claims against the Original SWMonkey.com. Southwest's claims relating to the Disabled SWMonkey.com also fail because the Disabled SWMonkey.com has no functionality and, consequently, cannot provide a basis for any of the claims asserted by Southwest, nor has Southwest pled any facts that would support of any of its claims against the Disabled SWMonkey.com.

DATED: March 6, 2018

By: s/ Charles L. Roberts
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CERTIFICATE OF SERVICE

On March 6, 2018, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Charles L. Roberts